IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Matthew Tilbrook	)
Serial No.	: 10/577,389	) Examiner:) Gennadiy Mesh
Cnfrm. No.	: 3439	)) Art Unit:) 1796
Filed	: August 31, 2006	)
For	: METHOD OF MANUFACTURE OF POLYACROLEIN	))

APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Dear Sir:

Applicant hereby requests reconsideration of the Patent Term Adjustment ("PTA") accorded the instant application. Reconsideration of the final PTA calculation to increase total PTA from 667 days to **896 days plus the number of days from the payment of the issue fee to issuance of the instant application as a patent**, is respectfully requested.

U.S. Patent and Trademark Office ("PTO") Delay Under 35 U.S.C. § 154(b)(1)(A) ("A Delay")

A first PTO action was due on or before October 31, 2007 (the date that is fourteen months from August 31, 2006, the date on which the application was completed under 35 U.S.C. § 371(c)). *See* 35 U.S.C. § 154(b)(1)(A)(i); 37 C.F.R. § 1.702(a)(1) and 1.703(a)(1). The PTO mailed the first non-final Office Action on August 28, 2009, thereby accruing a PTO delay of **667 days**. Applicant does not dispute the calculation of this delay.

U.S. Patent and Trademark Office ("PTO") Delay Under 35 U.S.C. § 154(b)(1)(B) ("B Delay")

Under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. §§ 1.702(b) and 1.703(b), the issue of a patent from the instant application was delayed due to the failure of the PTO to issue such a patent within 3 years after the filing date of the instant application. This period of B Delay should be calculated as the number of days in the period beginning on the day after the date that is three years

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after the date on which national stage commenced under 35 U.S.C. § 371(b), and ending on the date a patent is issued. 37 C.F.R. §§ 1.702(b) and 1.703(b). The current PTA calculation does not account for any B Delay by the PTO. Thus, Applicant contests the current PTA calculation.

The national stage commenced on May 6, 2006, and three years from this date is May 6, 2009. The entire period of B Delay cannot yet be determined, because a patent based on the instant application has not yet issued. However, the period must be at least from May 7, 2009, to the payment of the issue fee (April 14, 2010), which is 343 days, plus the period from the payment of the issue fee to the date a patent is issued based on the instant application. Thus, the period of B Delay is **343 days plus the period from the payment of the issue fee to the date a patent is issued based on the instant application**.

Overlap

Under 35 U.S.C. § 154 (b)(1)(C), 37 C.F.R. § 1.703(f), and the recent decision of *Wyeth v. Kappos*, 93 U.S.P.Q.2d 1257 (Fed. Cir. 2010), the period of adjustment attributable to the delay of the PTO is only totaled to the extent that the periods of A Delay and B Delay do not overlap *on the same calendar day*. Thus, because the period of A Delay of 667 days overlaps partially with the B Delay (from May 7 to August 28, 2009), the total overlap of A Delay and B Delay is **114 days**.

Applicant Delay Under 37 C.F.R. § 1.704

There was no delay attributable to the Applicant under 37 C.F.R. § 1.704(b).

Terminal Disclaimer

The instant application is not subject to a terminal disclaimer.

Conclusion

In view of all the foregoing, Applicant submits that the current PTA calculation of 667 days is incorrect. Applicant respectfully requests reconsideration of the total PTA, to be increased from 667 days to **896 days plus the number of days from the payment of the issue fee to issuance of the instant application as a patent**. The PTA should be calculated as follows:

1. Total PTO Delay should be calculated as 896 days plus the period from the payment of the issue fee to the date a patent is issued based on the instant application (i.e., the sum of 667 days of A Delay and 343 days plus the period from the payment of

the issue fee to the date a patent is issued based on the instant application of B Delay, minus 114 days of overlap)

    2.   Total Applicant delay should be calculated as 0 days

    3.   Total PTA should be calculated as 896 days <u>plus</u> the period from the payment of the issue fee to the date a patent is issued based on the instant application.

Please apply the fee required under 37 C.F.R. §1.18(e) and any other required charges or credits to Deposit Account No. 141138.

Respectfully submitted,

Date: <u>April 14, 2010</u>   <u>/Edwin V. Merkel/</u>
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